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July 21, 1989

**SUPERFUND PROGRAM  
MANAGEMENT BRANCH**

**BY TELECOPY AND  
OVERNIGHT DELIVERY**

Michael Berman, Esq.  
U.S. Environmental Protection  
Agency, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

**BY OVERNIGHT DELIVERY**

Steven Willey, Esq.  
United States Department  
of Justice  
Environmental Enforcement  
Section  
Lands and Natural Resources  
Division  
10th St. and Pennsylvania  
Avenue, N.W.  
Washington, D.C. 20530

Re: Fields Brook Superfund Site  
Ashtabula, Ohio

Dear Counsellors:

The undersigned companies, RMI Company, Gulf + Western Inc., Detrex Corporation, Centerior Energy Corporation, and Occidental Chemical Corporation (successor to Hooker Electrochemical Corporation and Diamond Shamrock Chemical Company) (hereinafter "the Settling Companies") are hereby formally responding to the United States Environmental Protection Agency's ("U.S. EPA") letter dated June 20, 1989 to 44 addressees in which U.S. EPA demands payment of \$969,282.49 jointly and severally from each PRP, allegedly for response costs incurred by U.S. EPA in connection with the Fields Brook Site (hereinafter "the Past Costs demand letter").

As you know, the Settling Companies have stepped forward and commenced the response actions at Fields Brook called for by U.S. EPA's unilateral administrative order pursuant to CERCLA §106 issued on March 22, 1989 (hereinafter "the §106 Order"). Thirteen other companies named as Respondents in the §106 Order have not undertaken the work required under the §106 Order and stand in violation of that order. Each of the non-complying §106 Order Respondents also was a recipient of the Past Costs demand letter.

As you also know, the Settling Companies met personally with U.S. EPA representatives in Chicago on July 10, 1989 to discuss the Past Costs demand letter, and had follow-up telephone conference calls on July 18 and 19, 1989. The United States Department of Justice ("U.S. DOJ") participated in the July 19 conference call.

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Steven Willey, Esq.  
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This letter will not attempt to memorialize each proposal and responsive objection or suggestion. For present purposes, it suffices to note that in each of the above discussions, the Settling Companies presented proposals which would preserve the government's right to seek full recovery of its costs associated with the Fields Brook Site, while treating Settling Companies better than companies which stand in violation of U.S. EPA's §106 Order. Both U.S. EPA and U.S. DOJ agreed to consider these proposals, and it is our understanding that this process is continuing. Also, during our conference call of July 19, U.S. EPA explained that the reason the Settling Companies should execute an agreement to toll the statute of limitations is to avoid a lawsuit for Past Costs and U.S. EPA and U.S. DOJ asked that the Settling Companies prepare and submit such an agreement. In response, two alternatives are enclosed: a unilateral tolling arrangement and a bilateral tolling agreement based on the agreement U.S. DOJ used at the Yellow Water Road Superfund Site.

At the Yellow Water Road Site in Baldwin Florida, the Department of Justice executed a bilateral tolling agreement promising not to sue the settling generators for one year in return for a promise by the settling generators to toll the Statute of Limitations for the same period. This arrangement permitted - but did not legally require - the Department of Justice to sue the non-settling owners and operators for past costs arising out of a removal action. In fact, shortly after the tolling agreement was signed, the Department of Justice sued the non-settlers.

At Fields Brook, as at the Yellow Water Road Site, there are both settlers and non-settlers. At both sites, U.S. EPA has issued a demand for reimbursement of past costs incurred by the Agency and has referred the matter to U.S. DOJ for enforcement purposes. The Settling Companies believe that the government should take the position, as it has at Yellow Water Road, that settlers and non-settlers are different and should be treated differently. As the Department of Justice pointed out in the enclosed letter with respect to the Yellow Water Road Site:

"However, because of the fruitful past course of negotiations in this case and the potential positive future outcome for further negotiations, it may be preferable to avoid litigation at this time on the Past Costs issue and toll any potentially applicable statute of limitations now."

Such an approach serves the dual goals of encouraging settlement and preserving the government's right to seek full recovery of its Past Costs.

Enclosed with this letter are the following documents:

1. The tolling agreement, prepared by U.S. DOJ for settlers at the Yellow Water Road Site, to enable U.S. DOJ to seek recovery of Past Costs first from non-settlers, along with U.S. DOJ's cover letter; and
2. Two alternative draft tolling agreements, one of which is patterned after the agreement which U.S. DOJ already has accepted at the Yellow Water Road Site.

The Settling Companies request the following from U.S. EPA and U.S. DOJ:

1. Formal responses to the two tolling arrangements proposed by the Settling Companies through this letter;
2. The issuance of a Past Costs demand letter to the Defense Plant Corporation identical to that issued to the Settling Companies. The federal government should also send a letter to the Settling Companies formally revising its demand for Past Costs so that the date on which interest begins to accrue for the Settling Companies is the same date on which interest on Past Costs begins to accrue for the Defense Plant Corporation and so that governmental and non-governmental recipients are treated alike with respect to the demand for Past Costs. This request is based in part on CERCLA Section 120(a) which provides: "Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under Section 107 of this Act."
3. An extension of the date on which interest will begin to accrue against the Settling Companies for Past Costs, pending a resolution of the parties' mutually expressed interest in devising an acceptable tolling arrangement;
4. Suggested dates for further negotiations with the Settling Companies to discuss the enclosed tolling proposals, and/or to discuss other resolutions for Past Costs.

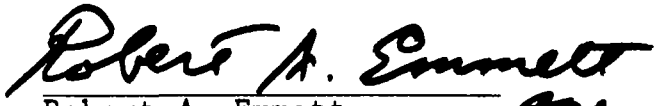
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Steven Willey, Esq.  
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The Settling Companies look forward to your prompt response.

Sincerely,

  
William W. Falsgraf  
Counsel for RMI Company *WFF*

  
Michael A. Cyphert  
Counsel for Gulf +  
Western Inc. *MAC*

  
Robert A. Emmett  
Counsel for Detrex  
Corporation *RAE*

  
Elizabeth A. Tulman  
Counsel for Occidental  
Chemical Corporation *EAT*

  
David Whitehead  
Counsel for Centerior  
Energy Corporation *DW*

cc: Mr. John Kelley  
Arthur I. Harris, Esq.  
Mr. Allen Wojtas  
Mr. Victor Hyatt